UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN L. NORRIS,

Plaintiff,

-vs-

CITY OF ROCHESTER; OFFICER ROBINSON; JOHN DOE SUPERVISOR #1-5, EACH IN THEIR INDIVIDUAL CAPACITY,

Defendants.

REPLY MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT

Civil Action No. 13-CV-6100

Plaintiff's response to Defendants' motion is little more than a collection of allegations and rumors not supported by the current record, including:

1.) Officer Moses Robinson and the victim had an inappropriate sexual relationship. (pg. 3 of Plaintiff's Response);
2.) Officer Robinson took the rape kit home and "lost it". (pg. 4 Plaintiff's Response);
3.) Plaintiff's was not present at the residence at the time of the alleged rape. (pg. 4 Plaintiff's Response);
4.) Officer Robinson continued "to allow prosecution" of the plaintiff despite a lack of DNA evidence. (pg. 5 Plaintiff's Response);
5.) RPD failed to verify the ability of the Plaintiff to perform sexually. (pg. 5 Plaintiff's Response).
6.) Failure to test verify the credibility of the accuser. (pg. 5 Plaintiff's Response).

In each of the above-listed allegations, Plaintiff cites to his own Complaint, not to evidence in the record. These unsupported allegations are not a proper basis for denying Defendants' motion.

Improper procedures:

Plaintiff has not alleged any facts that speak to intent or malice. His unsupported allegations of alleged misconduct speak more to negligence or "sloppy" police work. A municipality is immune from suit when conduct complained of involves the exercise of professional judgment, even if that judgment was poor in retrospect. *Kenavan v. City of New York*, 70 NY2d 558 (1987). No cause of action for ordinary negligence will lie against a municipality for errors in judgment. *Kroger v. City of Mount Vernon*, 104 AD2d 855, 856. "When official action involves the exercise of discretion or expert judgment in policy matters, and is not exclusively ministerial, a municipal defendant generally is not answerable in damages for injurious consequences of that action." *Tango v. Tulevech*, 61 NY2d 34, 40. The professional judgment rule would insulate the municipal employer from liability for a decision "where the … conduct involves the exercise of professional judgment such as electing one among many acceptable methods of carrying out tasks, or making tactical decisions that, in retrospect show poor judgment" (*Kenavan v City of New York*, 70 N.Y.2d 558, 569, [1987].

When seeking liability against a ***municipality*** in the exercise of its discretionary duties, Plaintiff needs to establish a special relationship. Absent the existence of a special duty, "[T]he general rule is that a municipality is immune from tort liability resulting from negligent performance of governmental functions, with the exception of non-delegable duties. *Balsam v. Delma Engineering Corp.*, 90 N.Y.2d 966, 967 (1997). When such a relationship is shown--and it is plaintiff's burden to establish it--the government is under a duty to exercise reasonable care toward the plaintiff." *Garrett v. Holiday Inns,* 58 N.Y.2d 253, 261 (1983). Plaintiff has a "heavy burden" to establish this special relationship and must demonstrate: 1) the municipality violated a statutory duty enacted for the benefit of a protected class, of which she is a member, 2) the municipality voluntarily assumed a duty that generated justifiable reliance by the person who benefits from that duty, 3) the municipality assumed positive direction and control in the face of a known, blatant and dangerous safety violation. *Id* at 261-262.

Therefore, whether Defendants actions are viewed as discretionary or ministerial, Plaintiff has fallen woefully short of establishing the elements of liability.

Qualified Immunity:

The facts of this case was brought before the District Attorney's Office, who upon review of the evidence, brought the case before a grand jury. Therefore, it is impossible for a jury to find that the Defendants' actions were unreasonable absent some showing of actual malice and collusion between both the District Attorney's Office and the Rochester Police Department. This record is devoid of such evidence.

Jurisdiction:

For reasons already articulated in Defendants' papers, this Court has no jurisdiction over the individually named Defendants.

CONCLUSION

WHEREFORE, it is respectfully requested that Defendants' motion for summary judgment be granted, together with such other and further relief as the Court deems just and proper, including awarding to the City Defendant the costs and disbursements of this proceeding.

DATED: August 1, 2016

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CORPORATION COUNSEL

s/Spencer L. Ash

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